Filed 10/20/09 Hatfield v. City of Los Angeles CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

JOHN HATFIELD, Plaintiff and Appellant, v. CITY OF LOS ANGELES et al., Defendants and Appellants.	B208526 (Los Angeles County Super. Ct. No. BS099887)

APPEALS from a judgment of the Superior Court of Los Angeles County, James Chalfant, Judge. Affirmed in part and reversed in part.

Gary Orville Ingemunson for Plaintiff and Appellant John Hatfield.

Rockard J. Delgadillo, City Attorney, Claudia McGee Henry, Senior Assistant City Attorney and Gregory P. Orland, Deputy City Attorney, for Defendants and Appellants City of Los Angeles and William J. Bratton, Chief of Police.

John Hatfield, a Los Angeles police officer for eight years, was terminated from his job after a police review board concluded he had used excessive force during the arrest of an unarmed suspect. Hatfield filed a petition seeking mandamus relief under Code of Civil Procedure section 1094.5, which was granted in part by the superior court. Although the court upheld the board's finding Hatfield had used excessive force during the arrest, it rejected the review board's supplemental finding Hatfield had acted maliciously with respect to the final three blows inflicted on the arrestee and remanded the matter to Chief of Police William J. Bratton for reconsideration of the penalty of termination in light of the court's reversal of the finding of malice.

Bratton and the City of Los Angeles (the City) appealed the trial court's judgment, arguing the court lacked discretion to order remand of the matter for reconsideration of the penalty. Hatfield cross-appealed, arguing the trial court erred in finding he had used excessive force during the arrest. He also contends the administrative process provided by the City fails to comply with Government Code section 3304, subdivision (b),[1] and the court abused its discretion in refusing to continue the hearing pending discovery in a parallel federal proceeding. We affirm in part and reverse in part.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Incident*

In the early morning of June 23, 2004 Hatfield and his partner, patrolling in Compton, saw a white Toyota Camry roll through a stop sign. A check of the Camry's license plate number revealed the car had been reported as stolen. When the officers tried to stop the Camry, the driver accelerated and entered a nearby freeway. After a lengthy, high-speed pursuit that involved four additional police vehicles and helicopter support, the Camry stopped at a dead-end next to a river wash. The driver, Stanley Miller, got out of the car and fled, running along the dirt path next to the wash with several officers, including Hatfield, in pursuit. Miller slowed down after approximately 200 yards and turned to face the pursuing officers, raising his hands in the air. The first officer on the

---

[1] Statutory references are to the Government Code unless otherwise indicated.

scene drew his revolver, pointed it at Miller and told him to get down on the ground. As Miller stooped down, the officer reholstered his gun, then tackled Miller and forced him to the ground. The first officer grabbed Miller's left arm, and a second officer grabbed his right arm.

Hatfield was the third officer to reach Miller, who lay prone on the ground restrained by two officers kneeling on either side of him. As Hatfield ran up to Miller, he aimed a kick at Miller's head and then dropped to his knees and hit Miller 11 times with his flashlight, striking Miller's shoulders and upper right arm, and delivered two knee strikes to Miller's upper body. As several other officers continued to grapple with Miller, Hatfield repositioned himself and delivered three more knee strikes. After the second set of knee strikes Hatfield's partner, who had been watching the effort to restrain Miller, approached Hatfield and waved him away from Miller. No more than 26 seconds elapsed between the time Hatfield reached Miller and the intervention by Hatfield's partner. Shortly afterward, the cluster of police officers around Miller separated, and Miller was lifted to his feet by the handcuffs restraining his wrists. He was searched by a single officer as the other officers, including Hatfield, mingled and congratulated each other for the successful arrest. The entire episode was videotaped by two local television news stations, whose helicopters had followed the pre-dawn car chase.

2. *The Complaint and Board of Rights Proceedings*

On April 28, 2005 Hatfield was served with a personnel complaint issued by Chief Bratton charging him with the use of unnecessary force. No penalty was specified in the complaint, but it advised Hatfield his actions would be reviewed by a board of rights (Board). The three-member Board convened on May 31, 2005, heard testimony from 11 witnesses and examined 26 exhibits, including the two videotapes of the incident taken by the local stations and a transcript of an interview with Miller in which he described being kicked and hit in the face and shoulders during the arrest. The Board unanimously concluded Hatfield was guilty of the use of unnecessary force. Explaining its finding, the Board analyzed Hatfield's assertion Miller had engaged in aggressive or

combative behavior and was trying to arm himself.[2] Applying the perspective of the reasonable police officer, the Board concluded Miller had, at worst, been uncooperative and Hatfield's assertion of concern about a possible weapon was not credible. As the Board chair pointed out, none of the other officers' actions demonstrated a genuine concern Miller was trying to arm himself. Indeed, the Board made an express finding it did not believe the testimony of Hatfield's fellow officers they shared his concern about a possible weapon.[3]

---

[2] Hatfield contends he had observed Miller reach under the seat during the car chase and hold up a solid object. He also claimed he saw a bulge in Miller's waistband during the foot chase and Miller's clenched fist held near the waistband. Miller also refused to unclench his fist during the arrest. When his fist was forced open, the officers found he was holding $8. No weapon was found on Miller's person.

[3] The Board's trust in the statements of the officers was possibly undercut by an egregious misstatement in the police report, which indicated a pair of wire crimpers had been found in Miller's pocket. An officer involved in the search after the arrest testified he found the wire crimpers in the Camry (likely used by Miller to steal the car by bypassing the ignition interlock) and then placed them in Hatfield's squad car. The officer also testified he passed a group of the other officers on his way to Hatfield's car, and showed them the wire crimpers. Asked if he had commented on the crimpers to the other officers, the officer acknowledged he had said something about the crimpers, but could not remember what it was. A report prepared by the district attorney's office while it was considering whether to bring criminal charges against Hatfield (which it declined to do) identified a sergeant at the scene who reported the officer had said, "Here's your gun." (The report was proffered as an exhibit in the Board proceeding by Hatfield but the Board excluded it on the City's objection.) When asked about that specific comment, the officer admitted he could have said that, but again stated he could not remember, as did the other officers who heard his comment. Hatfield's partner, who prepared the police report, testified Hatfield told him the wire crimpers had been found in Miller's pocket.

Additional factors influencing the Board's decision included Miller's apparent cooperation in lying on the ground at the direction of the first officer to reach him; Hatfield's failure to assess the situation before kicking Miller and inflicting 11 flashlight blows; and the presence of other officers who were available to help control Miller if he had become aggressive or combative but who stood by throughout the incident because they believed Miller did not pose a threat to the officers.

In keeping with these findings the Board concluded Hatfield's kick, 11 flashlight strikes and five knee strikes were "outside of Department policy, . . . and his use of force was not reasonable [or] necessary."

The Board then turned to the penalty phase. Hatfield presented evidence of his commendable performance as an officer, which was confirmed by his supervisors and other witnesses and acknowledged by the Board. Nonetheless, the Board concluded, based on its review of one of the videotapes, certain actions taken by Hatfield had been malicious. As the Board chair explained, "We examined that scenario many times. It appears you delivered two strikes to Miller, knee strikes, consciously taking the time to reposition yourself and deliver three more. As we mentioned in our findings, your knee strikes were delivered to the area around Miller's head. Miller stated he was kneed in the face. Your repositioning after the first two strikes to then deliver the final three is seen by us as a malicious, intentional act apparently for the purpose of punishment." Based on that finding, the Board recommended Hatfield be terminated. On August 5, 2005 Chief Bratton adopted the recommendation of the Board, and Hatfield was terminated.

3. *Proceedings in the Superior Court*

On October 24, 2005 Hatfield filed a petition for a peremptory writ of mandate in the superior court seeking an order compelling the City to set aside his termination. After a number of continuances at the request of both parties, the hearing was conducted on March 19, 2008. The court affirmed the Board's finding Hatfield had used excessive force during Miller's arrest but concluded the Board had erred in finding the last three knee strikes had been maliciously inflicted. As the court observed in reaching this conclusion, "I don't see any distinction between the initial blows and the last two kicks. Whatever reason he was doing it for, it seems to me that reason continued all the way through the 26 seconds. So they didn't find the earlier blows to be malicious, and I don't see the distinction myself." In an additional colloquy with counsel, the court acknowledged "a temporal distinction" between the two sets of knee strikes but "not a very long temporal distinction." The court concluded the Board's finding of malice was thus impermissibly based on statements Miller had made in a pre-hearing interview

concerning the kicks and blows to his head, which, because they were hearsay, were admissible in a board of rights hearing only to corroborate direct evidence. Judgment was entered on April 22, 2008, and a writ was issued ordering the City to "reconvene [the Board] for the purpose of considering an appropriate penalty in light of the Court's finding that the Board's determination that Hatfield acted with malice . . . is not supported by the weight of the evidence because it is supported solely by objectionable hearsay."

CONTENTIONS

The City contends the trial court improperly rejected the Board's finding of malice and exceeded its discretion in remanding the matter to the Board for reassessment of the proper penalty. Hatfield contends both the Board and the court erred in finding he had used excessive force and abused its discretion in refusing to continue the hearing to allow him to develop evidence of improper command influence on the Board's ruling. Hatfield also challenges the City's termination procedures, alleging the City failed to comply with section 3304, subdivision (b).

DISCUSSION

1. *Standard of Review*

Termination of a nonprobationary public employee substantially affects that employee's fundamental vested right in employment. (*Jackson v. City of Los Angeles* (2003) 111 Cal.App.4th 899, 902; *McMillen v. Civil Service Com.* (1992) 6 Cal.App.4th 125, 129.) Accordingly, when ruling on a petition for administrative mandamus seeking review of procedures that resulted in the termination, the trial court examines the administrative record and exercises its independent judgment to determine if the weight of the evidence supports the findings upon which the agency's discipline is based or if errors of law were committed by the administrative tribunal. (*Wences v. City of Los Angeles* (2009) 177 Cal.App.4th 305, 314; *McMillen,* at p. 129.) On appeal we must sustain the trial court's factual findings if supported by substantial evidence (*Jackson,* at p. 902; *Evans v. Department of Motor Vehicles* (1994) 21 Cal.App.4th 958, 967, fn. 1); but we will review de novo all questions of law (*Gai v. City of Selma* (1998) 68

Cal.App.4th 213, 219; *Oldham v. Kizer* (1991) 235 Cal.App.3d 1046, 1057), including the legal issue whether a hearing before an administrative agency was unlawful or procedurally unfair. (*Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1169 [“‘ultimate determination of whether the administrative proceedings were fundamentally fair is a question of law to be decided on appeal’”].)

“‘Evidence is substantial if any reasonable trier of fact could have considered it reasonable, credible, and of solid value.’” (*Kazensky v. City of Merced* (1998) 65 Cal.App.4th 44, 52-53.) In making that determination, we must resolve all evidentiary conflicts and draw all legitimate and reasonable inferences in favor of the trial court’s decision. (*Valiyee v. Department of Motor Vehicles* (1999) 74 Cal.App.4th 1026, 1031; *Kazensky*, at p. 52.) Nonetheless, as the Supreme Court explained in *Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 812, the independent judgment test “‘does not mean that the preliminary work performed by the administrative board in sifting the evidence and in making its findings is wasted effort.’” Rather, the superior court must “begin its review with a presumption of the correctness of administrative findings, and then, after affording the respect due to these findings, exercise independent judgment in making its own findings.” (*Id.* at p. 819; see also *Lam v. Bureau of Security & Investigative Services* (1995) 34 Cal.App.4th 29, 36 [reviewing court “‘may look to the findings in [the administrative agency’s] decision for guidance in determining whether the trial court’s judgment is supported by substantial evidence’”].) Unless it can be demonstrated the agency’s actions are not grounded upon any reasonable basis in law or any substantial basis in fact, the courts should not interfere with the agency’s discretion or substitute their wisdom for that of the agency. (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 150-151.)

We review the penalty imposed by an administrative agency for abuse of discretion without regard to the trial court’s determination. (*Cummings v. Civil Service Com.* (1995) 40 Cal.App.4th 1643, 1652; *California Real Estate Loans, Inc. v. Wallace* (1993) 18 Cal.App.4th 1575, 1580 [“court will not disturb the decision of the Commissioner on the penalty unless the licensee demonstrates an abuse of discretion”].) “‘Neither an appellate court nor a trial court is free to substitute its discretion for that of

the administrative agency concerning the degree of punishment imposed.'" (*Cummings*, at p. 1652.) There is no abuse of discretion when reasonable minds could differ as to the propriety of the penalty. (*Pegues v. Civil Service Com.* (1998) 67 Cal.App.4th 95, 107.) Even in instances when either the trial court or the reviewing court believes the penalty was too harsh, it cannot interfere with an agency's imposition of a penalty. (*Szmaciarz v. State Personnel Bd.* (1978) 79 Cal.App.3d 904, 921.)

2. *The Trial Court Did Not Err in Affirming the Board's Finding on the Use of Excessive Force*

"Determining whether the force used to effect a particular seizure is 'reasonable' under the Fourth Amendment requires a careful balancing of '"the nature and quality of the intrusion on the individual's Fourth Amendment interests"' against the countervailing governmental interests at stake." (*Graham v. Connor* (1989) 490 U.S. 386, 396 [109 S.Ct. 1865, 104 L.Ed.2d 443].) "Because '[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application' [citation], . . . its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." (*Ibid.*; see *Chew v. Gates* (9th Cir. 1994) 27 F.3d 1432, 1441 [factors identified in *Graham v. Connor* "are not to be considered in a vacuum but only in relation to the amount of force used" in a particular arrest or detention scenario].) As the Supreme Court elaborated, "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation. [¶] As in other Fourth Amendment contexts, however, the 'reasonableness' inquiry in an excessive force case is an objective one: the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." (*Graham*, at pp. 396-397; accord, *Edson v. City of Anaheim* (1998) 63 Cal.App.4th 1269, 1273-1275.)

Hatfield argues he had an objectively reasonable concern Miller was trying to arm himself and contends both the Board and the trial court erred in finding he used excessive force during the arrest. We see no basis to reverse the Board and the trial court on this point as there is ample evidence to support their respective findings. The Board painstakingly reviewed the Department's use-of-force policies and reconstructed in detail the actions by Hatfield and other officers during the arrest. The videotapes allowed the Board and the court to evaluate those actions second-by-second. From the beginning of the arrest, when Miller lowered himself to the ground with his arms outstretched, through the 26-second period in which Hatfield struck him, Miller's conduct was determined by the Board to be less than aggressive or combative. Accordingly, Hatfield's actions were not in keeping with Department policy, which, as the trial court acknowledged, was plainly drafted with constitutional requirements in mind. In the court's independent judgment, the Board's finding was justified; and we have no grounds to disturb that finding.

3. *The Trial Court Erred in Reversing the Board's Finding of Malice, Which Was Made in Support of the Penalty Imposed*

As set forth above, the superior court has an extremely limited role in reviewing the penalty imposed by an administrative agency after a finding of misconduct. (See, e.g., *Cummings v. Civil Service Com.*, *supra*, 40 Cal.App.4th at p. 1652 ["'[n]either an appellate court nor a trial court is free to substitute its discretion for that of the administrative agency concerning the degree of punishment imposed'"].) Because the Board made its finding that Hatfield had acted with malice only in the context of the penalty to be imposed, the court erred in applying its independent judgment to this subsidiary finding.[4]

---

[4] The Board did not explain the definition of malice it applied to Hatfield's conduct, or the significance of the finding to the penalty. As advanced by the City on appeal, "[m]alice . . . is defined as 'that attitude or state of mind which actuates the doing of an act for some improper or wrongful motive or purpose. It does not necessarily require that the defendant be angry or vindictive or bear any actual hostility or ill will toward the plaintiff.'" (*Laible v. Superior Court* (1984) 157 Cal.App.3d 44, 53, quoting BAJI

The court's reasoning discloses it mistakenly believed the Board's finding of malice was subject to independent review. At the hearing the court stated it was unable to distinguish any change in Hatfield's state of mind "between the initial blows and the last two kicks." Expressly acknowledging it was "independently reviewing" the evidence, the court noted it was reasonable for Hatfield to have operated initially on the belief Miller was armed. "At some point [Miller] was clearly not [armed], and I'm not sure when that point came. But I don't see the distinction between the last two kicks and all the rest of the blows . . . the Board purported to draw. There was a temporal distinction, obviously, but not a very long temporal distinction. Really, I agree with the petitioner that you have to use the testimony of [] Miller, the testimony of his hearsay interview to reach the conclusion." The judgment subsequently issued by the court stated the Board's finding on malice was "not supported by the weight of the evidence because it is supported solely by objectionable hearsay."

The court's independent review of the Board's finding of malice, made in the course of assessing the appropriate penalty to impose for Hatfield's use of excessive force, was error.[5] The court also erred in finding the Board had improperly relied on Miller's hearsay statements to an investigating officer. Section 363.40 of the Board of Rights Manual (11th ed. 2000) provides, "Hearsay evidence may be used for the purpose

---

No. 6.94.) Alternatively, "'[a] malicious intent is to be presumed "from the deliberate commission of an unlawful act, for the purpose of injuring another."'" (*People v. Kreiling* (1968) 259 Cal.App.2d 699, 705.) Commonly, malice is defined in a civil proceeding as "conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (Civ. Code, § 3294, subd. (c)(1).)

In light of the limited scope of our review of this finding, the actual definition of malice contemplated by the Board does not affect our analysis.

[5] Hatfield unintentionally underscores the relationship between the finding of malice and the penalty imposed by the Board. As he argues, "Without the determination of malice, it would appear from the record that the penalty would be less than termination . . . ." Precisely so. The Board's finding of malice provided the underpinning for the penalty imposed. As such, it was not subject to the trial court's independent review.

of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in [a] civil action. If the hearsay would be inadmissible over objection in a civil action, the Board may not rely on it to make a finding of 'Guilty.' To do so would likely result in a ruling that it had abused its discretion." As the court recognized, this section allows the Board to consider hearsay evidence "if it is corroborated by other evidence but may not rely on it as the sole evidence to support a finding if a timely objection is made." Hatfield does not dispute Miller's statements could be used for this purpose; and this limitation was expressly acknowledged at the time the statements were admitted.

The record indicates the Board first cited Miller's statements in support of its ruling on Hatfield's use of excessive force. In announcing that finding, the Board chair recited numerous factors that had influenced the Board and acknowledged it had "permissibly used Miller's hearsay statement, . . . in relevant part, and finds corroboration in that Miller said . . . 'I mean, somebody was—a—kneeing me in my face and I was trying to cover my face, so he kicked me. And then someone said, "There's people watching." So they stopped.'" The court properly affirmed that finding.

The chair again referred to Miller's statements in announcing the Board's finding of malice, but for an even more limited purpose. Focusing on the videotapes, the chair explained the Board was seeking to determine whether there was "an error in judgment, or an out of control officer, or a conscious, malicious act." With respect to the initial kick and flashlight strikes, the chair stated, "These, we felt, were an out of control officer at best, or a malicious act at worse." After showing the videotaped kicks once more, the chair continued, "We examined that scenario many times. It appears you delivered two strikes to Miller, knee strikes, consciously taking the time to reposition yourself and deliver three more. As we mentioned in our findings, your knee strikes were delivered to the area around Miller's head. Miller stated he was kneed in the face. Your repositioning after the first two strikes to then deliver the final three is seen by us as a malicious, intentional act apparently for the purpose of punishment." As these statements show, the only use of Miller's statements was for corroboration of the angle of Hatfield's kick, an

issue for which the videotapes provided direct evidence. Use of Miller's statement in this limited manner was not error under section 363.40.

The Board's finding of malice, therefore, did not depend on an improper use of inadmissible hearsay evidence. Moreover, the Board's finding was unquestionably within its broad discretion, the only review we are authorized to undertake. (Cf. *Bixby v. Pierno, supra,* 4 Cal.3d at pp. 150-151 [courts should not interfere with an agency's discretion or substitute their wisdom for agency's unless agency's actions are not grounded upon any reasonable basis in law or any substantial basis in fact].) While we commend the trial court for its candid appreciation of the difficulties faced by law enforcement personnel responding to unpredictable and dangerous situations, the Board provided a compelling rationale for its finding: The delay between the first and second set of knee strikes gave Hatfield an adequate opportunity to reassess Miller's level of resistance and the resources available to counter that resistance. The Board cited the extensive training afforded Los Angeles police officers in the selection and implementation of appropriate levels of force. It also analyzed Hatfield's response in light of the presence of other officers, similarly trained, who were available to provide additional control if needed. The Board found particularly significant the fact those other officers did not detect the level of threat arguably perceived by Hatfield; indeed, his own partner intervened to persuade Hatfield to back away after he had delivered the final three knee strikes.

In sum, the trial court's reversal of the Board's finding of malice made in support of the penalty it assessed was unjustified.

4. *The Court Did Not Abuse Its Discretion in Denying Hatfield's Request for a Continuance*

A trial continuance may be granted only upon an affirmative showing of good cause. (Cal. Rule of Court, rule 3.1332(c).) We review a court's decision refusing a continuance under the deferential abuse of discretion standard. (*Foster v. Civil Service Com.* (1983) 142 Cal.App.3d 444, 448.) Under this standard, the reviewing court will "only interfere with [the lower courts] ruling if [it] find[s] that under all the evidence,

viewed most favorably in support of the trial court's action, no judge reasonably could have reached the challenged result." (*Estate of Billings* (1991) 228 Cal.App.3d 426, 430.) The trial court abuses its discretion when it has "'exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination.'" (*Mendoza v. Club Car, Inc.* (2000) 81 Cal.App.4th 287, 301.)

Hatfield complains the trial court abused its discretion in failing to order a continuance of the hearing on his petition to allow time for discovery in his related federal case, a civil rights claim against the Department based on allegations the command structure had improperly influenced the Board's decision.[6] In denying Hatfield's request, the court explained the request had not been made until Hatfield filed his reply brief in support of the petition and was not supported with an adequate showing of good cause. In particular, the petition had been filed two and a half years earlier and the allegations made in 2006, yet Hatfield had failed to demonstrate diligence in pursuing the requested discovery.

On appeal Hatfield contends the record contained adequate information from which the court could have found good cause. That burden is not properly imposed on the trial court: "The burden rests on the complaining party to demonstrate from the record that such an abuse has occurred." (*Forthmann v. Boyer* (2002) 97 Cal.App.4th 977, 985; see *Mahoney v. Southland Mental Health Assocs. Med. Group* (1990) 223 Cal.App.3d 167, 170-172 [denial of continuance motion not abuse of discretion where counsel failed to submit declaration in support of request, give prior notice, make request promptly or show good cause].) There was no abuse of discretion in denying the continuance.

5. *The Appeal Process Afforded by the City Complies with Government Code Section 3304, Subdivision (b)*

The Peace Officers Bill of Rights Act (§ 3300 et seq.) (POBRA) "'sets forth a list of basic rights and protections which must be afforded all peace officers [citation] by the

---

[6] Our affirmance of the trial court's decision to deny a continuance in no way reflects on the merits of Hatfield's civil rights claim, which is not before us.

public entities which employ them. It is a catalogue of the minimum rights [citation] the Legislature deems necessary to secure stable employer-employee relations.'" (*Mays v. City of Los Angeles* (2008) 43 Cal.4th 313, 320 (*Mays*), citing *Baggett v. Gates* (1982) 32 Cal.3d 128, 135; see also *White v. County of Sacramento* (1982) 31 Cal.3d 676, 681 [POBRA "is concerned primarily with affording individual police officers certain procedural rights during the course of proceedings which might lead to the imposition of penalties against them"].) "The various procedural protections provided by POBRA 'balance the public interest in maintaining the efficiency and integrity of the police force with the police officer's interest in receiving fair treatment.'" (*Mays*, at p. 320; accord, *Jackson v. City of Los Angeles*, *supra*, 111 Cal.App.4th at p. 909.)

Section 3304, subdivision (b), provides: "No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency against any public safety officer who has successfully completed the probationary period . . . without providing the public safety officer with an opportunity for administrative appeal." "The limited purpose of an administrative appeal under section 3304 is to give the peace officer subjected to punitive action an opportunity 'to establish a formal record of the circumstance surrounding his termination' [citation] and 'to attempt to convince the employing agency to reverse its decision, either by demonstrating the falsity of charges which led to punitive action, or through proof of mitigating circumstances.'" (*Binkley v. City of Long Beach* (1993) 16 Cal.App.4th 1795, 1806.) "Section 3304 itself, however, does not provide a mechanism for administrative appeal; rather, public agencies employ a number of locally created mechanisms, including those established by collective bargaining agreements, for that purpose." (*Mays, supra,* 43 Cal.4th at p. 322.)

Hatfield contends the procedure used in his case failed to comply with section 3304 because Chief Bratton's charge did not specify a proposed sanction and there was no administrative appeal from the factual findings made by the Board. The trial court rejected this argument, concluding the procedure before the Board provided the necessary appeal from the charge notifying Hatfield he was to be disciplined for the use of excessive force during the arrest. We agree. Although the notice to Hatfield did not

expressly identify termination as a possible sanction, he was adequately advised he faced serious discipline for the incident. In addition, although not conducted as a review of the findings and conclusions from a prior evidentiary hearing, the Board's de novo review of the determination by the chief of police that discipline was warranted satisfied the requirement for an administrative appeal as set forth in section 3304.

Under POBRA, a "punitive action" is "any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment." (§ 3303.) According to the administrative procedures established in the Los Angeles City Charter (Charter) for the discipline of tenured officers, the chief of police has the duty to determine whether an officer will be disciplined after the appropriate investigation is completed and to serve the officer with a complaint "containing a statement in clear and concise language of all the facts constituting the charge or charges." (Charter, § 1070(d).) That is, in effect, the determination of the agency, even if it does not specify the proposed discipline. As the Supreme Court observed in *Mays*, "There is no indication in [section 3304] that the local mechanism cannot provide for a determination of the precise discipline at a hearing occurring subsequent to the notification envisioned by section 3304(d)."[7] (*Mays, supra*, 43 Cal.4th at p. 323.)

When the charges warrant discipline of a demotion in rank or a suspension with loss of pay of fewer than 22 days, the officer has the opportunity to request a hearing by a board of rights to review the charges. (Charter, § 1070(b)(2)-(4).) This procedure is known within the Los Angeles Police Department (Department) as an "opted board." If the officer fails to apply for a hearing within the prescribed period, he or she is deemed to have waived the hearing. When the charges warrant discipline in excess of a suspension of 22 days without pay, the chief is required to convene a board of rights to review the

---

[7] Section 3304, subdivision (d), creates a one-year limitation period within which the agency must complete its investigation and notify the officer of its intent to impose disciplinary action. Charter section 1070(b) and (c) constitute the City's administrative implementation of this requirement.

charges and determine whether the officer is guilty of the charges made. (Charter, § 1070(b)(1).) This procedure is known as an "ordered board." Whether the board of rights hearing is opted or ordered, it is a de novo evidentiary hearing; and the Department has the burden of proving each charge. (Charter, § 1070(f), (*l*).) Upon a finding of guilt the board of rights recommends discipline, including suspension, demotion, reprimand or removal. (Charter, § 1070(n).) The chief may accept the penalty recommendation of the board of rights or impose a lesser penalty, but may not increase the penalty. (Charter, § 1070(p).) As the trial court recognized, the automatic referral of Hatfield's complaint to a board of rights hearing (an ordered board) signaled Hatfield was subject to a serious penalty, including possible termination, even though the charge failed to specify termination as the proposed discipline.

For Los Angeles police officers, the notice served by Chief Bratton under Charter section 1070(d) unquestionably complies with the notification of charges required by section 3304, subdivision (d). The notice also triggers the right to an administrative appeal from the initial finding of officer responsibility, as specified in section 3304, subdivision (b). In the case of an opted board for an officer facing discipline less drastic than termination, appellate courts have previously concluded review of the chief's determination by a board of rights satisfies the requirement of an administrative appeal. (See, e.g., *Jackson v. City of Los Angeles* (1999) 69 Cal.App.4th 769, 780; *Holcomb v. City of Los Angeles* (1989) 210 Cal.App.3d 1560, 1566.)[8] The same reasoning applies in the case of an ordered board. The review by a board of rights follows an internal fact-finding investigation conducted under the aegis of the chief of the police, after which the chief determines whether the facts warrant discipline of the officer involved. The board of rights thus fulfills an appellate review function. That is sufficient to comply with the requirements of section 3304, subdivision (b). (See *Holcomb*, at p. 1568 ["request for a

---

[8] Although these cases involved prior versions of the City's procedures for the discipline of police officers, none of the differences between those earlier procedures and the current ones would lead to a different conclusion on this point.

Board hearing is the pragmatic equivalent of an administrative appeal"]; *Jackson*, at p. 780.)

DISPOSITION

The judgment is reversed with respect to the trial court's rejection of the Board's finding of malice. The trial court is directed to vacate its April 22, 2008 order granting in part the petition for a writ of mandate and to enter a new order denying the petition in its entirety. In all other respects the judgment is affirmed. The parties shall bear their own costs on appeal.

PERLUSS, P. J.

We concur:

ZELON, J.

JACKSON, J.